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No. 73-6848

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

JOHN LEE BOWEN, PETITIONER

v.

UNITED STATES OF AMERICA

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ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

ROBERT H. BORK,
Solicitor General,

Department of Justice,
Washington, D. C. 20530.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

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JOHN LEE BOWEN, PETITIONER

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UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO
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SUPPLEMENTAL MEMORANDUM FOR THE UNITED STATES

In our initial response to the petition for a writ of certiorari in this case we suggested that the petition be held pending action on our petition in United States v. Ortiz, No. 73-2050. We reasoned that, if the Court grants the petition in Ortiz and agrees with our contention that warrants are not required for checkpoint searches, then there would be no need to reach petitioner's retroactivity contentions. If, on the other hand, the Court disagrees with our argument on the checkpoint issue and therefore reaches our second contention in Ortiz -- that the exclusionary rule should not be applied in the Ninth Circuit with respect to warrantless checkpoint searches conducted before that court's decision in the present case -- then this Court's opinion in Ortiz might affect the proper disposition of petitioner's contentions in this case.

Upon further reflection, we have concluded that it might be preferable to grant certiorari in the present case as well as in Ortiz in order to ensure a determination this Term of all the unresolved issues concerning checkpoint searches. If the Court should determine, contrary to our contentions in Ortiz, that warrants are required for checkpoint searches and that the exclusionary rule should apply with respect to the post-Almeida-Sanchez (but pre-Bowen) search involved in Ortiz, petitioner's contention in the present case that the rule's retroactivity should extend as well to the pre-Almeida-Sanchez search involved here would remain unresolved.

It is important to the administration of justice that these retroactivity issues be fully resolved as expeditiously as possible. There are several pending petitions for writs of certiorari in cases, like the present one, involving pre-Almeida-Sanchez checkpoint searches. There are also numerous petitions for rehearing pending in the Ninth Circuit in cases, like Ortiz, involving post-Almeida-Sanchez but pre-Bowen checkpoint searches. 1/

Although a decision by this Court in United States v. Peltier, No. 73-2000 -- which involves the applicability of the exclusionary rule with respect to pre-Almeida-Sanchez "roving patrol" searches -- might also bear on the proper treatment of pre-Almeida-Sanchez "checkpoint" searches, granting certiorari in the present case together with Ortiz would ensure that no new round of retroactivity litigation would be necessary next

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1/ In order to avoid cluttering this Court's docket with duplicative petitions for writs of certiorari in cases involving such searches, the government has followed the practice in the Ninth Ciruit of filing petitions for rehearing in the court of appeals with the suggestion that the petition be held pending this Court's action in Ortiz. In some cases, the government has asked the court of appeals simply to stay the issuance of its mandate in such cases.

Term in checkpoint cases and would unambiguously dispose of all pending cases involving those issues. 2/

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1974.

2/ Since the issues in the present case and Ortiz are closely related, it may not be necessary to assign a full hour of argument time to each case.